

## HUMAN SERVICES DEPARTMENT[441]

### Notice of Intended Action

#### **Proposing rule making related to child care record checks and providing an opportunity for public comment**

The Human Services Department hereby proposes to amend Chapter 109, “Child Care Centers,” Chapter 110, “Child Development Homes,” and Chapter 120, “Child Care Homes,” Iowa Administrative Code.

#### *Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 237A.12 and 2018 Iowa Acts, House File 2444.

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 237A.12; 2018 Iowa Acts, House File 2444; and 45 CFR 98.

#### *Purpose and Summary*

The Department is required by federal and state legislation to implement additional mandatory prohibitions to involvement with child care as a result of a record check. Iowa Code chapter 237A was amended by 2018 Iowa Acts, House File 2444, with an effective date of July 1, 2018. Persons convicted of specific misdemeanors and felonies will be prohibited from involvement with child care. A person will also be prohibited if the person refuses to participate in a record check evaluation or makes what the person knows to be a false statement of material fact in connection with a conviction or record check.

Persons seeking to be involved with child care may now be ineligible due to changes in prohibitions for child caretakers based on evaluation of criminal and abuse records. Parents can be assured that additional safety measures are in place through legislation to ensure children are safe in child care settings.

These proposed amendments also implement the requirement of additional background checks on persons involved with child care in accordance with federal requirements. The background check results must be received prior to the person’s involvement with child care; however, a waiver is currently permitted by the federal Office of Child Care under the caveat that, at a minimum, fingerprint checks requests are submitted to the Department of Public Safety prior to the person’s involvement. A child care center currently has 30 days upon staff hire before the center must submit fingerprints to the Department of Public Safety for evaluation. The proposed amendments will require fingerprint checks to be done prior to staff involvement with child care.

#### *Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

#### *Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

#### *Waivers*

These amendments do not provide for a specific waiver authority because anyone may request a waiver of these provisions in a specified situation under the Department’s general rule on exceptions at 441—1.8(17A,217).

### *Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on September 18, 2018. Comments should be directed to:

Harry Rossander  
Bureau of Policy Coordination  
Department of Human Services  
Hoover State Office Building, Fifth Floor  
1305 East Walnut Street  
Des Moines, Iowa 50319-0114  
Email: [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us)

### *Public Hearing*

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

### *Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend paragraph **109.6(6)“d”** as follows:

*d. National criminal history checks.* National criminal history checks based on fingerprints are required for all persons subject to record checks ~~under this subrule effective with a center’s initial licensure or relicensure on or after June 1, 2010.~~ The national criminal history check shall be repeated for each person every four years and when the department or center becomes aware of any new transgressions committed by that person in another state. The department is not responsible for the cost of conducting the national criminal history check.

(1) and (2) No change.

(3) The child care center shall provide fingerprints to the department of public safety ~~no later than 30 days after the subject’s approval for employment at the center~~ prior to a person’s involvement with child care at the center. The center shall submit the fingerprints on forms or in a manner allowed by the department of public safety.

(4) to (8) No change.

ITEM 2. Amend paragraph **109.6(6)“e”** as follows:

*e. Mandatory prohibition.* A person with any of the following convictions or founded abuse reports is prohibited from involvement with child care:

(1) Founded child or dependent adult abuse that was determined to be sexual abuse.

(2) ~~Placement on the~~ A requirement to be listed on any state sex offender registry or the national sex offender registry.

(3) ~~Felony child endangerment or neglect or abandonment of a dependent person.~~ Any of the following felony convictions:

1. Child endangerment or neglect or abandonment of a dependent person.

2. Domestic abuse.
3. Crime against a child including, but not limited to, sexual exploitation of a minor.
4. Forcible felony.
5. Arson.

(4) ~~Felony domestic abuse.~~ A record of a misdemeanor conviction of a crime against a child that constitutes one of the following offenses:

1. Child abuse.
2. Child endangerment.
3. Sexual assault.
4. Child pornography.

(5) ~~Felony crime against a child including, but not limited to, sexual exploitation of a minor.~~ If a person subject to a record check refuses to consent to a record check, the person shall be prohibited from involvement with child care.

(6) ~~Forcible felony.~~ If a person has been convicted of a crime and makes what the person knows to be a false statement of material fact in connection with the conviction or record check, the person shall be prohibited from involvement with child care.

ITEM 3. Adopt the following **new** subparagraph **109.6(6)“h”(5)**:

(5) The department shall reevaluate any transgressions where a state or federal law change requires different considerations of the transgression than had been previously applied.

ITEM 4. Amend paragraph **110.11(3)“d”** as follows:

*d. National criminal history record checks.* Fingerprint-based checks of national criminal history records shall also be completed before a person’s involvement with child care. This requirement shall be ~~effective on or after July 1, 2013,~~ for an initial application for registration or a renewal application for registration. The national criminal history record check shall be repeated for each person subject to the check every four years and when the department or registrant becomes aware of any new transgressions committed by that person in another state. The department is responsible for the cost of conducting the national criminal history record check.

(1) to (3) No change.

ITEM 5. Amend paragraph **110.11(3)“e”** as follows:

*e. Mandatory prohibition.* A person with any of the following convictions or founded abuse reports is prohibited from involvement with child care:

- (1) Founded child or dependent adult abuse that was determined to be sexual abuse.
- (2) ~~Placement on the A~~ requirement to be listed on any state sex offender registry or the national sex offender registry.
- (3) ~~Felony child endangerment or neglect or abandonment of a dependent person.~~ Any of the following felony convictions:

1. Child endangerment or neglect or abandonment of a dependent person.
2. Domestic abuse.
3. Crime against a child including, but not limited to, sexual exploitation of a minor.
4. Forcible felony.
5. Arson.

(4) ~~Felony domestic abuse.~~ A record of a misdemeanor conviction of a crime against a child that constitutes one of the following offenses:

1. Child abuse.
2. Child endangerment.
3. Sexual assault.
4. Child pornography.

(5) ~~Felony crime against a child including, but not limited to, sexual exploitation of a minor.~~ If a person subject to a record check refuses to consent to a record check, the person shall be prohibited from involvement with child care.

(6) ~~Forcible felony.~~ If a person has been convicted of a crime and makes what the person knows to be a false statement of material fact in connection with the conviction or record check, the person shall be prohibited from involvement with child care.

ITEM 6. Amend subparagraph **110.11(3)“f”(1)** as follows:

(1) A person with the following conviction or founded abuse report is prohibited from involvement with child care for five years from the date of the conviction or founded abuse report:

1. Conviction of a controlled substance offense ~~under Iowa Code chapter 124.~~
2. No change.

ITEM 7. Adopt the following **new** subparagraph **110.11(3)“h”(6)**:

(6) The department shall reevaluate any transgressions where a state or federal law change requires different considerations of the transgression than had been previously applied.

ITEM 8. Amend paragraph **120.11(3)“e”** as follows:

*e. Mandatory prohibition.* A person with any of the following convictions or founded abuse reports is prohibited from involvement with child care:

- (1) Founded child or dependent adult abuse that was determined to be sexual abuse.
- (2) ~~Placement on the~~ A requirement to be listed on any state sex offender registry or the national sex offender registry.
- (3) ~~Felony child endangerment or neglect or abandonment of a dependent person.~~ Any of the following felony convictions:
  1. Child endangerment or neglect or abandonment of a dependent person.
  2. Domestic abuse.
  3. Crime against a child including, but not limited to, sexual exploitation of a minor.
  4. Forcible felony.
  5. Arson.
- (4) ~~Felony domestic abuse.~~ A record of a misdemeanor conviction of a crime against a child that constitutes one of the following offenses:
  1. Child abuse.
  2. Child endangerment.
  3. Sexual assault.
  4. Child pornography.
- (5) ~~Felony crime against a child including, but not limited to, sexual exploitation of a minor.~~ If a person subject to a record check refuses to consent to a record check, the person shall be prohibited from involvement with child care.
- (6) ~~Forcible felony.~~ If a person has been convicted of a crime and makes what the person knows to be a false statement of material fact in connection with the conviction or record check, the person shall be prohibited from involvement with child care.

ITEM 9. Amend subparagraph **120.11(3)“f”(1)** as follows:

(1) A person with the following conviction or founded abuse report is prohibited from involvement with child care for five years from the date of the conviction or ~~the~~ founded abuse report:

1. Conviction of a controlled substance offense ~~under Iowa Code chapter 124.~~
2. No change.

ITEM 10. Adopt the following **new** subparagraph **120.11(3)“h”(6)**:

(6) The department shall reevaluate any transgressions where a state or federal law change requires different considerations of the transgression than had been previously applied.